IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 127 OF 2004

Mr. Walter alies Pereira ... Appellant

V/s

Mr. Raymond Thomas D'Silva & anr. ... Respondent

Shri R. R. Salvi for the appellant.

Shri G.S. Godbole for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 21ST SEPT., 2004.

P.C.:

1. This is an appeal filed by the appellant - defendant against the judgment and order dated 12.8.2003 passed by the Addl. District Judge, Palghar, dismissing the appellant's appeal and confirming the judgment of the lower Court i.e. Civil Judge, Vasai, decreeing the suit for possession filed against the appellant.

2 I have heard both sides. Perused the record. The only point sought to be raised in this appeal is to the effect that, whether the Courts below failed to appreciate that it was necessary for all the co-owners to issue notice under Sec.106 of the Transfer of

Property Act and whether the suit was bad-in-law when all the co-owners were not joined in the said suit as plaintiffs.

3. After hearing both sides, I must note that the issue is settled by the Supreme Court in the case of **Smt. Kanta Goel v/s B.P. Pathak & ors., reported in (1977) 2 SCC 814,** wherein the Apex Court has held in categorical terms that a co-owner is as much an owner of the entire property as any sole owner of the property is. The law having been thus put beyond doubt, the contention that the absence of the other co-owners on record disentitled the first respondent from suing for eviction fails. It must be noted that this judgment was given following the earlier judgment in the case of **Sri ram Pasricha (1976 4 SCC 184).** Therefore, there is no doubt whatsoever that one co-owner would successfully file a suit and on merits obtain decree.

There is no other point involved at this stage. Moreover, the evidence on record seen to be properly appreciated by both the Courts below. The ratio of the ruling in the case of **Kondiba Dagadu Kadam v/s Savitribai Sopan Gujar & ors., reported in AIR 1999 SC 722** must be followed in this case, where concurrent

findings of facts are recorded by both the Courts below. It is observed by the Apex Court that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100. Suffice to say, therefore, that there is no merit in this appeal and, therefore, it deserves to be dismissed and stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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